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HOUSE BILL 565

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

INTRODUCED BY  
GARY K. KING

AN ACT

RELATING TO ANIMALS; ENACTING THE PET DEALER ACT; PROVIDING RIGHTS AND REMEDIES; ALLOWING LOCAL GOVERNMENTS TO IMPOSE AND COLLECT A SURCHARGE ON SALES OF ANIMALS TO COMBAT PET OVERPOPULATION; PROVIDING FOR CIVIL PENALTIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE. --This act may be cited as the "Pet Dealer Act".

Section 2. DEFINITIONS. --As used in the Pet Dealer Act:

- A. "animal" means a nonhuman;
- B. "clinically ill" means having an illness that is apparent to a veterinarian based on observation, examination or testing of the animal or upon a review of the veterinary records of the animal;
- C. "nonelective surgical procedure" means a surgical

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1 procedure that is necessary to preserve or restore the health of  
2 an animal, to prevent the animal from experiencing pain or  
3 discomfort or to correct a condition that would interfere with  
4 the animal's ability to function in a normal manner;

5 D. "person" means an individual, firm, partnership,  
6 corporation or other business association;

7 E. "pet dealer" means a person engaging in the  
8 business of selling animals at retail; provided, however, that  
9 "pet dealer" does not include a casual breeder who breeds or  
10 rears animals on his premises and has not sold, transferred or  
11 given away more than three litters of animals in the immediately  
12 preceding year;

13 F. "purchase price" includes the gross receipts tax  
14 paid on the retail price of an animal;

15 G. "purchaser" means a person who purchases an  
16 animal from a pet dealer with the intention of keeping the  
17 animal as a pet;

18 H. "socialization" means an animal has daily  
19 opportunities for exercise, play and interaction with people and  
20 other animals; and

21 I. "veterinarian" means a person licensed in New  
22 Mexico to practice veterinary medicine.

23 Section 3. RECEIPT FROM COMMON CARRIER. --A pet dealer  
24 receiving an animal from a common carrier shall transport the  
25 animal from the common carrier's premises within four hours

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1 after receipt of notification by the common carrier of the  
2 completion of shipment and arrival of the animal at the common  
3 carrier's point of destination.

4 Section 4. EXAMINATION. --

5 A. An animal received by a pet dealer shall be  
6 examined by a veterinarian prior to being placed with other  
7 animals or within five days of receipt of the animal, whichever  
8 occurs first, and once every fifteen days thereafter while it is  
9 in the possession or custody of the pet dealer.

10 B. No animal shall be offered for sale by a pet  
11 dealer until the animal has been examined by a veterinarian.

12 C. The pet dealer shall provide a sick animal with  
13 proper veterinary care without delay. An animal diagnosed with  
14 a contagious or infectious disease shall be caged separately  
15 from healthy animals until the veterinarian determines that the  
16 animal is free from contagion or infection. The isolation area  
17 in which a contagious or infectious animal is kept shall:

18 (1) not be used to house a healthy animal or a  
19 new arrival waiting for veterinary examination;

20 (2) not be used for storing open food  
21 containers, dishes or utensils that come in contact with healthy  
22 animals;

23 (3) have an exhaust fan that creates air  
24 movement from the isolation area to an area outside the  
25 premises; provided that the removal of exhaust air from the

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1 isolation area may be accomplished by the use of existing  
2 heating and air conditioning ducts if no exhaust air is  
3 permitted to enter or mix with fresh air for use by the general  
4 animal population in the facility; and

5 (4) upon removal of a contagious or infectious  
6 animal, be cleaned and disinfected before a healthy animal is  
7 placed in the area.

8 D. A sick animal shall be treated, euthanized or  
9 surrendered to a humane organization, veterinarian or animal  
10 control agency that consents to take the animal. If the  
11 veterinarian deems the animal unfit for purchase due to disease  
12 or congenital or hereditary condition, any of which is fatal or  
13 causes the animal to suffer unduly, the veterinarian may  
14 humanely euthanize the animal. The veterinarian shall provide  
15 the pet dealer with a written statement as to why the animal was  
16 euthanized.

17 E. If an animal is returned to a pet dealer due to  
18 disease, illness or a congenital or hereditary condition  
19 requiring veterinary care, the pet dealer shall provide the  
20 animal with proper veterinary care, including the options  
21 provided in Subsection D of this section.

22 Section 5. REQUIREMENTS FOR CARE OF ANIMALS. --

23 A. A pet dealer shall:

24 (1) maintain facilities where animals are kept  
25 in a sanitary condition;

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1 (2) provide animals with adequate nutrition and  
2 potable water;

3 (3) provide adequate space appropriate to the  
4 age, size, weight and species or breed of the animal, including  
5 providing sufficient space for the animal to stand up, to sit  
6 down and to turn about freely using normal body movements  
7 without the head touching the top of the cage and to lie in a  
8 natural position;

9 (4) provide animals housed on wire flooring  
10 with a rest board, floor mat or similar device that can be  
11 maintained in a sanitary condition;

12 (5) provide animals with adequate  
13 socialization;

14 (6) wash hands before and after handling an  
15 infectious or contagious animal;

16 (7) maintain either:

17 (a) a fire alarm system that is connected  
18 to a central reporting station that alerts the local fire  
19 department in case of fire; or

20 (b) a fire suppression sprinkler system;  
21 and

22 (8) provide veterinary care without delay when  
23 necessary.

24 B. A pet dealer shall not purchase or assume  
25 ownership of a cat or dog that is younger than eight weeks old.

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1 C. A pet dealer shall not keep an animal longer than  
2 three months.

3 Section 6. RECORDS. -- A pet dealer shall keep a written  
4 record of the sale of each animal for at least two years after  
5 the date of the sale. The record shall contain all the  
6 information required to be disclosed by the pet dealer and shall  
7 be available to animal control officers and law enforcement  
8 officers for inspection during normal business hours.

9 Section 7. REPRESENTATION REGARDING ANIMAL'S PEDIGREE  
10 REGISTRATION. --

11 A. A pet dealer shall not state, promise or  
12 represent to the purchaser, directly or indirectly, that an  
13 animal is registered or capable of being registered with an  
14 animal pedigree registry organization unless the pet dealer  
15 provides the purchaser with the documents necessary for that  
16 registration within one hundred twenty days following the sale  
17 of the animal.

18 B. If the pet dealer fails to provide the documents  
19 necessary for registration, the purchaser, upon written notice  
20 to the pet dealer, may keep the animal and receive a partial  
21 refund of seventy-five percent of the purchase price or return  
22 the animal, along with all documentation previously provided to  
23 the purchaser, for a full refund.

24 Section 8. REGISTRATION NOTICE--DISCLOSURE STATEMENT. --

25 A. A pet dealer that sells registered or registrable

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1 animals with a pedigree registry shall post conspicuously within  
2 close proximity to those animals a notice that states:  
3 "Pedigree registration does not assure proper breeding  
4 conditions, health, quality or claims to lineage."

5 B. For every animal sold by a pet dealer that is  
6 sold with the representation that the animal is registered or  
7 registrable with an animal pedigree registry organization, the  
8 following fully completed disclosure shall be made by the pet  
9 dealer orally and in writing on a sheet separate from any other  
10 statement in substantially the following form:

11 "Disclosure by \_\_\_\_\_

12 ANIMAL PEDIGREE REGISTRATION DISCLOSURE

13 Description of animal:

14 \_\_\_\_\_

15 The animal you are purchasing is registered/registrable (circle  
16 one) with the \_\_\_\_\_(enter name of registry).

17 Registration means only that \_\_\_\_\_(enter  
18 name of registry) maintains information regarding the parentage  
19 and identity of this animal; it does not guarantee the quality  
20 or health of this animal, and it does not guarantee quality  
21 lineage. Since animal pedigree registries may depend on the  
22 honesty and accuracy of persons registering animals,  
23 registration does not guarantee the accuracy of the lineage  
24 recorded or that this animal is a purebred.

25 Acknowledged: \_\_\_\_\_ Date: \_\_\_\_\_

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1 Purchaser's signature".

2 C. The disclosure shall be signed and dated by the  
3 purchaser of the animal, acknowledging receipt of a copy of the  
4 statement. The pet dealer shall retain a copy of the signed  
5 disclosure.

6 Section 9. INFORMATION DISCLOSURE STATEMENT FOR  
7 PURCHASER. --

8 A. The pet dealer shall deliver to the purchaser at  
9 the time of sale a written information disclosure statement in a  
10 standardized form prescribed by the board of veterinary medicine  
11 containing the following information:

12 (1) the breeder's and broker's names and  
13 addresses, if known, or, if not known, the source of the animal;

14 (2) if the person from whom the animal was  
15 obtained is a pet dealer licensed by the United States  
16 department of agriculture, the person's name, address and  
17 federal dealer identification number;

18 (3) the date of the animal's birth, unless  
19 unknown because of the source of the animal, and the date the  
20 pet dealer received the animal;

21 (4) the animal's veterinary record, including a  
22 record of the immunizations, inoculations and worming treatments  
23 administered to the animal that specifies the date and type of  
24 immunization, vaccine or worming treatment and a record of any  
25 known disease with which the animal is afflicted;

1 (5) whether the animal is a purebred,  
2 registered or registrable animal and, if the animal is being  
3 sold as such, the names and registration numbers of the sire and  
4 dam and the litter number, if known;

5 (6) the breed, sex, color and identifying marks  
6 of the animal, if any, and, if the breed is unknown or mixed,  
7 the record shall indicate that information;

8 (7) if the animal is from a United States  
9 department of agriculture-licensed source, the individual  
10 identifying tag, tattoo or collar number for the animal;

11 (8) for purchasers of cats and dogs,  
12 information about the pet overpopulation problem in New Mexico  
13 and the value of spaying and neutering;

14 (9) a record of any veterinary treatment or  
15 medication given to the animal while in the possession of the  
16 pet dealer; and

17 (10) a statement signed by the pet dealer at  
18 the time of sale that the animal has no known disease and that  
19 the animal has no known congenital or hereditary condition that  
20 adversely affects the health of the animal at the time of the  
21 sale or that is likely to adversely affect the health of the  
22 animal in the future; or

23 (11) if the animal does have a disease or  
24 congenital or hereditary condition that adversely affects the  
25 health of the animal at the time of sale or is likely to

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1 adversely affect the health of the animal in the future, then a  
2 record of the disease or congenital or hereditary condition and  
3 a statement signed by a veterinarian that authorizes the sale of  
4 the animal, recommends necessary treatment, if any, and verifies  
5 that the disease or congenital or hereditary condition does not  
6 require hospitalization or a nonelective surgical procedure in  
7 the future; provided, however, that a veterinarian's statement  
8 is not required for intestinal or external parasites unless  
9 their presence makes or is likely to make the animal clinically  
10 ill. The veterinarian's statement is valid for seven days  
11 following examination of the animal by the veterinarian.

12 B. The pet dealer shall orally disclose the contents  
13 of the written information disclosure statement.

14 C. The written information disclosure statement  
15 shall be signed by the pet dealer certifying the accuracy of the  
16 statement and by the purchaser acknowledging receipt of the  
17 written information disclosure statement.

18 D. A disease or congenital or hereditary condition  
19 that adversely affects the health of an animal at the time of  
20 sale or is likely to adversely affect the health of the animal  
21 in the future shall be one that is apparent at the time of sale  
22 or that should have been known by the pet dealer from the  
23 history of veterinary treatment disclosed pursuant to the  
24 provisions of this section.

25 Section 10. PURCHASER'S REMEDIES AFTER SALE OF UNFIT

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1 ANIMAL-- VETERINARIAN' S STATEMENT-- PAYMENTS DEADLINE. --

2 A. An animal shall be considered unfit for sale if a  
3 veterinarian states in writing that:

4 (1) within fifteen days after the purchaser has  
5 taken physical possession of an animal sold by a pet dealer, the  
6 animal becomes ill due to a disease that existed in the animal  
7 before delivery of the animal to the purchaser; or

8 (2) within two years after the purchaser takes  
9 physical possession of the animal, the animal has a congenital  
10 or hereditary condition that adversely affects the health of the  
11 animal or requires hospitalization or a nonelective surgical  
12 procedure.

13 B. If an animal is considered unfit for sale, the  
14 pet dealer shall provide the purchaser with any of the following  
15 remedies that the purchaser elects:

16 (1) return the animal to the pet dealer for a  
17 refund of the purchase price plus reimbursement for reasonable  
18 veterinary fees for diagnosis and treatment of the animal, the  
19 total not to exceed two hundred percent of the purchase price of  
20 the animal;

21 (2) exchange the animal for an animal of the  
22 purchaser's choice of equivalent value, if a replacement animal  
23 is available, and reimbursement for reasonable veterinary fees  
24 for diagnosis and treatment of the animal in an amount not to  
25 exceed the purchase price of the exchanged animal; or

1 (3) keep the animal and be reimbursed for  
2 reasonable veterinary fees for diagnosis and treatment of the  
3 animal in an amount not to exceed one hundred fifty percent of  
4 the purchase price of the animal.

5 C. If the animal has died, regardless of the date of  
6 the death of the animal, the purchaser may obtain a refund for  
7 the purchase price of the animal or a replacement animal of  
8 equivalent value of the purchaser's choice and reimbursement for  
9 reasonable veterinary fees for diagnosis and treatment of the  
10 animal in an amount not to exceed the purchase price of the  
11 animal if either of the following conditions exists:

12 (1) a veterinarian states in writing that the  
13 animal has died due to a disease that existed within fifteen  
14 days after the purchaser obtained physical possession of the  
15 animal after the sale by a pet dealer; or

16 (2) a veterinarian states in writing that the  
17 animal has died due to a congenital or hereditary condition that  
18 was diagnosed by the veterinarian within two years after the  
19 purchaser obtained physical possession of the animal after the  
20 sale by the pet dealer.

21 D. The veterinarian's statement shall contain the  
22 following information:

- 23 (1) the purchaser's name and address;  
24 (2) the dates the animal was examined;  
25 (3) the species or breed and age of the animal,

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1 if known;

2 (4) that the veterinarian physically examined  
3 the animal;

4 (5) that the animal has or had a disease or  
5 congenital or hereditary condition that rendered it unfit for  
6 purchase or resulted in its death; and

7 (6) the precise findings of the examination or  
8 necropsy, including laboratory results or copies of laboratory  
9 results.

10 E. If a reimbursement for reasonable veterinary fees  
11 is being requested, the veterinarian's statement shall be  
12 accompanied by an itemized bill of fees appropriate for  
13 diagnosis and treatment of the disease or congenital or  
14 hereditary condition.

15 F. Refunds and payments of reimbursable fees shall  
16 be paid, unless contested, by the pet dealer to the purchaser  
17 not later than ten business days following receipt of the  
18 veterinarian's statement or, if applicable, not later than ten  
19 business days after the date on which the animal was returned to  
20 the pet dealer.

21 Section 11. PRESUMPTION OF ILLNESS--FEES.--

22 A. A finding by a veterinarian of intestinal or  
23 external parasites shall not be grounds for declaring an animal  
24 unfit for sale unless their presence makes or is likely to make  
25 the animal clinically ill.

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1           B. The fee for veterinary services shall be deemed  
2 reasonable if the services rendered are appropriate for the  
3 diagnosis and treatment of disease or congenital or hereditary  
4 condition and the fee is similar to fees charged by other  
5 veterinarians in the locale for similar services.

6           Section 12. PROCEDURE TO CONTEST DEMAND FOR REMEDIES. --

7           A. If the pet dealer contests a demand for any of  
8 the remedies specified in Section 10 of the Pet Dealer Act, the  
9 pet dealer may, except in the case of the animal's death,  
10 require the purchaser to produce the animal for examination by a  
11 veterinarian designated by the pet dealer. The pet dealer shall  
12 pay the cost of the examination.

13           B. If the purchaser and the pet dealer are unable to  
14 reach an agreement within ten business days following receipt by  
15 the pet dealer of the veterinarian's statement provided by  
16 Section 10 of the Pet Dealer Act, or following receipt of the  
17 animal for examination by the pet dealer's veterinarian,  
18 whichever is later, the purchaser may initiate an action in a  
19 court of competent jurisdiction to resolve the dispute or the  
20 parties may submit to binding arbitration if mutually agreed  
21 upon in writing by the parties.

22           C. The prevailing party in the dispute may collect  
23 court costs and reasonable attorney fees only if the court finds  
24 the other party acted in bad faith.

25           Section 13. REQUIREMENTS TO OBTAIN REMEDIES. -- To obtain

1 the remedies provided for in Section 10 of the Pet Dealer Act,  
2 the purchaser shall comply substantially with the following  
3 requirements:

4 A. notify the pet dealer as soon as possible but not  
5 more than five days after the diagnosis by a veterinarian of a  
6 health problem, including a congenital or hereditary condition,  
7 and of the name and telephone number of the veterinarian  
8 providing the diagnosis;

9 B. if the animal died, provide the pet dealer with a  
10 written statement from a veterinarian that the animal died from  
11 a disease, illness or congenital or hereditary condition that  
12 existed on or before the delivery of the animal to the  
13 purchaser. The presentation of the statement shall be  
14 sufficient proof to claim reimbursement or replacement and the  
15 return of the deceased animal to the pet dealer is not required;  
16 and

17 C. inform the pet dealer of the remedy chosen  
18 pursuant to Section 10 of the Pet Dealer Act.

19 Section 14. REFUND, REPLACEMENT AND REIMBURSEMENT OF  
20 VETERINARY FEES--LIMITATIONS. --No refund, replacement or  
21 reimbursement of veterinary fees shall be made if any of the  
22 following conditions exist:

23 A. the disease or death resulted from maltreatment  
24 or neglect or from an injury sustained or a disease contracted  
25 subsequent to the delivery of the animal to the purchaser;

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1           B. the purchaser fails to carry out the recommended  
2 treatment prescribed by the examining veterinarian who made the  
3 initial diagnosis; provided, however, this subsection shall not  
4 apply if the cost of the treatment together with the veterinary  
5 fee for the diagnosis would exceed the purchase price of the  
6 animal;

7           C. a veterinarian's statement was provided to the  
8 purchaser as part of the written information disclosure  
9 statement that disclosed the disease or congenital or hereditary  
10 condition for which the purchaser seeks to return the animal;  
11 provided, however, that this subsection does not apply if,  
12 within two years after the purchaser takes physical possession  
13 of the animal, a veterinarian states in writing that the disease  
14 or congenital or hereditary condition requires or is likely in  
15 the future to require hospitalization or a nonelective surgical  
16 procedure or that the disease or congenital or hereditary  
17 condition resulted in the death of the animal; or

18           D. the purchaser refuses to return to the pet dealer  
19 all documents previously provided to the purchaser for the  
20 purpose of registering the animal; provided, however, this  
21 subsection does not apply if the purchaser signs a written  
22 statement certifying that the documents have been inadvertently  
23 lost or stolen.

24           Section 15. WRITTEN NOTICE OF PURCHASER'S RIGHTS. --

25           A. Every pet dealer that sells an animal shall

1 provide the purchaser at the time of sale, and a prospective  
2 purchaser upon request, with a written notice of rights. The  
3 notice shall be provided as a separate document. The written  
4 notice of rights shall be signed by the purchaser acknowledging  
5 that he has reviewed the notice. The notice shall be in  
6 substantially the following form:

7 "A STATEMENT OF NEW MEXICO LAW GOVERNING  
8 THE SALE OF ANIMALS

9 The sale of animals is subject to the provisions of the Pet  
10 Dealer Act.

11 If a veterinarian states in writing that your animal is  
12 unfit for purchase because it became ill due to a disease that  
13 existed within fifteen days following delivery to you, or within  
14 two years in the case of a congenital or hereditary condition,  
15 you may choose one of the following:

16 (1) return your animal and receive a refund of the  
17 purchase price and receive reimbursement for reasonable  
18 veterinary fees up to the purchase price of the animal;

19 (2) return your animal and receive an animal of your  
20 choice of equivalent value, if a replacement animal is  
21 available, and receive reimbursement for reasonable veterinary  
22 fees up to the purchase price of the exchanged animal; or

23 (3) keep your animal and receive reimbursement for  
24 reasonable veterinary fees up to one hundred fifty percent of  
25 the original purchase price of the animal.

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1           If your animal dies, you may receive a refund for the  
2 purchase price of the animal or a replacement animal of your  
3 choice of equivalent value. You may also be reimbursed for  
4 reasonable veterinary fees for the diagnosis and treatment of  
5 the animal. To obtain available remedies, your veterinarian  
6 must state in writing that the animal died due to a disease that  
7 existed within fifteen days after you obtained physical  
8 possession of the animal after the sale by the pet dealer or  
9 states that the animal died due to a congenital or hereditary  
10 condition that was diagnosed by your veterinarian within two  
11 years after you obtained physical possession of the animal after  
12 the sale by the pet dealer. The total of refund and  
13 reimbursement fees may not be more than twice the purchase price  
14 of the animal.

15           To exercise these rights, you must notify the pet dealer as  
16 quickly as possible but no later than five days after your  
17 veterinarian informs you that a problem exists. You must tell  
18 the pet dealer about the problem and give the pet dealer the  
19 name and telephone number of the veterinarian providing the  
20 diagnosis.

21           If you are making a claim, you must present to the pet  
22 dealer a written veterinarian's statement, in a form prescribed  
23 by law, that the animal is unfit for purchase and an itemized  
24 statement of all veterinary fees related to the claim. This  
25 information must be presented to the pet dealer no later than

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1 five days after you receive the written statement from the  
2 veterinarian.

3 If the pet dealer wishes to contest the statement or the  
4 veterinarian's bill, the pet dealer may request that you produce  
5 the animal for examination by a veterinarian of the pet dealer's  
6 choice. The pet dealer shall pay the cost of this examination.

7 A deceased animal need not be returned to the pet dealer if  
8 you submit a statement issued by a veterinarian stating the  
9 cause of death.

10 If you and the pet dealer cannot resolve the claim within  
11 ten business days following receipt of the veterinarian's  
12 statement or the examination by the pet dealer's veterinarian,  
13 whichever occurs later, you may file an action in a court of  
14 competent jurisdiction to resolve the dispute. The court may  
15 award costs and attorney fees to the prevailing party if the  
16 court finds that the other party acted in bad faith. If the pet  
17 dealer does not contest the matter, the pet dealer must make the  
18 refund or reimbursement no later than ten business days after  
19 receiving the veterinarian's statement.

20 If the pet dealer represented your animal as registrable  
21 with an animal pedigree registry organization, the pet dealer  
22 shall provide you with the papers necessary to process the  
23 registration within one hundred twenty days following the date  
24 you received the animal. If the pet dealer fails to deliver the  
25 papers within the prescribed time, you are entitled to return

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1 the animal for a full refund of the purchase price or, if you  
2 choose to keep the animal, a refund of seventy-five percent of  
3 the purchase price.

4 THIS STATEMENT IS A SUMMARY OF KEY PROVISIONS OF THE  
5 CONSUMER PROTECTION REMEDIES AVAILABLE TO YOU. NEW MEXICO LAW  
6 ALSO PROVIDES SAFEGUARDS TO PROTECT PET DEALERS. IF YOU HAVE  
7 ANY QUESTIONS, OBTAIN A COPY OF THE COMPLETE RELEVANT STATUTES.

8 The pet dealer will discuss other information required by  
9 law to be provided to you upon request. "

10 B. The pet dealer shall post in a conspicuous  
11 location a sign in large print that states that the notice  
12 provided for in this section is available to purchasers and  
13 potential purchasers upon request.

14 Section 16. REMEDIES NOT EXCLUSIVE. --

15 A. Nothing in the Pet Dealer Act limits the rights  
16 and remedies that are otherwise available to a purchaser under  
17 any other law, nor shall that act limit the pet dealer and the  
18 purchaser from agreeing between themselves on additional terms  
19 and conditions that are not inconsistent with that act. An  
20 agreement by a purchaser to waive any rights under that act is  
21 void.

22 B. Nothing in the Pet Dealer Act limits or  
23 authorizes any act or omission that would be a crime under the  
24 Criminal Code, Chapter 77 NMSA 1978 or other New Mexico laws.

25 C. Nothing in the Pet Dealer Act shall preclude a

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1 person from pursuing relief through the Unfair Practices Act.

2 Section 17. LOCAL GOVERNMENT POWERS NOT LIMITED. -- Nothing  
3 in the Pet Dealer Act shall affect the governing body of a  
4 county or municipality from regulating, restricting or  
5 prohibiting the sale or ownership of a particular species or  
6 breed of animal.

7 Section 18. SURCHARGE ON SALE OF ANIMAL--LOCAL GOVERNMENT  
8 MAY IMPOSE AND COLLECT. --The governing body of a municipality or  
9 county may impose and collect a "pet population control  
10 surcharge" of not more than ten dollars (\$10.00) on the sale of  
11 an animal by a pet dealer. The surcharge shall be used by the  
12 local governing body for pet population control measures,  
13 including paying the costs of spaying or neutering animals and  
14 for efforts to educate the public on the effects of pet  
15 overpopulation and on measures citizens can take to reduce or  
16 eliminate the problem of pet overpopulation.

17 Section 19. VIOLATION OF ACT--CIVIL PENALTIES. --

18 A. A person violating any provision of the Pet  
19 Dealer Act shall be liable for a civil penalty of not to exceed  
20 one thousand dollars (\$1,000) per violation. The civil action  
21 may be prosecuted by the district attorney for the county in  
22 which the violation occurred.

23 B. Except as otherwise provided in the Pet Dealer  
24 Act, no pet dealer shall knowingly sell an animal that has a  
25 disease or congenital or hereditary condition that requires

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1 hospitalization or nonelective surgical procedures. In addition  
2 to the civil penalty imposed pursuant to Subsection A of this  
3 section, the pet dealer may be prohibited from selling animals  
4 for up to thirty days. For a second offense under this  
5 subsection, the pet dealer shall be liable for a civil penalty  
6 of up to two thousand five hundred dollars (\$2,500) or a  
7 prohibition from selling animals for up to ninety days or both.  
8 For a third offense under this subsection, the pet dealer shall  
9 be liable for a civil penalty of up to five thousand dollars  
10 (\$5,000) or a prohibition from selling animals for up to six  
11 months or both. For a fourth and subsequent offense under this  
12 subsection, the pet dealer shall be liable for a civil penalty  
13 of up to ten thousand dollars (\$10,000) or a prohibition from  
14 selling animals for up to one year or both. For purposes of  
15 this subsection, a violation that occurred over five years prior  
16 to the most recent violation shall not be considered.

17 C. A pet dealer who fails to comply with pedigree  
18 registration disclosure requirements shall be liable to the  
19 purchaser for civil damages in an amount equal to three times  
20 the cost of the animal. Claim for payment pursuant to this  
21 subsection shall be made within one year from the date of  
22 purchase of the animal. The remedy provided in this subsection  
23 shall be in addition to any other remedies or penalties provided  
24 in the Pet Dealer Act.

25 Section 20. EFFECTIVE DATE. --The effective date of the

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1 provisions of this act is July 1, 1997.

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**State of New Mexico  
House of Representatives**

FORTY-THIRD LEGISLATURE  
FIRST SESSION, 1997

March 6, 1997

Mr. Speaker:

Your CONSUMER AND PUBLIC AFFAIRS COMMITTEE, to  
whom has been referred

HOUSE BILL 565

has had it under consideration and reports same with  
recommendation that it DO NOT PASS, but that

HOUSE CONSUMER AND PUBLIC AFFAIRS COMMITTEE  
SUBSTITUTE FOR HOUSE BILL 565

DO PASS, and thence referred to the JUDICIARY  
COMMITTEE.

**FORTY-THIRD LEGISLATURE  
FIRST SESSION, 1997**

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Respectfully submitted,

\_\_\_\_\_  
Gary King, Chairman

Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_

(Chief Clerk)

(Chief Clerk)

Date \_\_\_\_\_

The roll call vote was 6 For 1 Against

Yes:           6

No:            Johnson

Excused:      Rios, Vigil, Trujillo

Absent:       None

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Underscored material = new  
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HOUSE CONSUMER AND PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR  
HOUSE BILL 565

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

AN ACT

RELATING TO ANIMALS; ENACTING THE PET DEALER ACT; PROVIDING  
RIGHTS AND REMEDIES; PROVIDING FOR CIVIL AND CRIMINAL PENALTIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE. -- This act may be cited as the "Pet  
Dealer Act".

Section 2. DEFINITIONS. -- As used in the Pet Dealer Act:

A. "animal" means a nonhuman mammal, reptile or  
amphibian sold or retained for the purpose of being kept as a  
pet, but does not include mice and other animals intended as  
feeder animals;

B. "clinically ill" means having an illness that is  
apparent to a veterinarian based on observation, examination or  
testing of the animal or upon a review of the veterinary records  
of the animal;

C. "commercial breeder" means a person engaging in  
the business of breeding animals for sale or exchange in return  
for a consideration and who harbors intact females for the

primary purpose of breeding animals for sale to pet dealers;

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D. "hobby breeder" means a noncommercial breeder who breeds dogs or cats with the primary purpose of exhibiting or showing them or improving the breed and who does not sell dogs or cats either directly or indirectly to retail or wholesale pet dealers;

E. "nonelective surgical procedure" means a surgical procedure that is necessary to preserve or restore the health of an animal, to prevent the animal from experiencing pain or discomfort or to correct a condition that would interfere with the animal's ability to function in a normal manner;

F. "person" means an individual, firm, partnership, corporation or other business association;

G. "pet dealer" means a person engaging in the business of selling animals as pets, including a commercial breeder;

H. "purchase price" includes the gross receipts tax paid on the retail price of an animal;

I. "purchaser" means a person who purchases an animal from a pet dealer with the intention of keeping the animal as a pet;

J. "socialization" means an animal has daily opportunities for exercise, play or interaction with people and other animals; and

K. "veterinarian" means a person licensed in New Mexico to practice veterinary medicine.

Section 3. EXEMPTION FROM ACT. --The Pet Dealer Act does not apply to hobby breeders; humane societies; nonprofit organizations performing the function of a humane society; animal control agencies; or that portion of a pet dealer business that offers stray dogs or cats for adoption by the public if the dogs or cats are spayed or neutered prior to sale

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1 and the sale is not for profit.

2 Section 4. RECEIPT FROM COMMON CARRIER. -- A pet dealer  
3 receiving an animal from a common carrier shall transport the  
4 animal from the common carrier's premises within a reasonable time  
5 after receipt of notification by the common carrier of the  
6 completion of shipment and arrival of the animal at the common  
7 carrier's point of destination to ensure that the animal's health,  
8 safety or life is not at risk.

9 Section 5. EXAMINATIONS-- DOGS AND CATS-- SICK ANIMALS. --

10 A. A pet dealer who has all dogs and cats examined by a  
11 veterinarian prior to being placed with other dogs or cats or  
12 within five days of receipt of the dog or cat, whichever occurs  
13 first, shall not be subject to payment of full veterinary fees as  
14 part of the customer remedies as provided in Section 12 of the Pet  
15 Dealer Act. A pet dealer who does not have all dogs and cats  
16 examined by a veterinarian prior to being placed with other dogs or  
17 cats or within five days of receipt of the dog or cat, whichever  
18 occurs first, shall be subject to payment of full veterinary fees  
19 as part of customer remedies as provided in Section 12 of the Pet  
20 Dealer Act.

21 B. When a pet dealer is found to be offering unfit  
22 animals for sale and has been instructed by a municipal or county  
23 animal control officer on more than one occasion to seek veterinary  
24 care for those animals, the pet dealer shall be required for a  
25 period of six months to have his animals inspected by a  
veterinarian prior to sale or prior to the animal being placed with  
other animals. After six months, a veterinarian of the animal  
control officer's choice shall review the frequency of animal

1 illness found during the inspection period and shall determine  
2 whether the inspections should continue for another six months.

3 C. The pet dealer shall provide a sick animal with  
4 proper veterinary care without delay. An animal diagnosed with a  
5 contagious or infectious disease shall be caged separately from  
6 healthy animals until the veterinarian determines that the animal  
7 is free from contagion or infection. The isolation area in which a  
contagious or infectious animal is kept shall:

8 (1) not be used to house a healthy animal or a  
9 new arrival waiting for veterinary examination;

10 (2) not be used for storing open food containers,  
11 dishes or utensils that come in contact with healthy animals;

12 (3) have an exhaust fan that creates air movement  
13 from the isolation area to an area outside the premises; provided  
14 that the removal of exhaust air from the isolation area may be  
15 accomplished by the use of existing heating and air conditioning  
16 ducts if no exhaust air is permitted to enter or mix with fresh air  
for use by the general animal population in the facility; and

17 (4) upon removal of a contagious or infectious  
18 animal, be cleaned and disinfected before a healthy animal is  
19 placed in the area.

20 D. A sick animal shall be treated, euthanized or  
21 surrendered to a humane organization, veterinarian or animal  
22 control agency that consents to take the animal. If the  
23 veterinarian deems the animal unfit for purchase due to disease or  
24 congenital or hereditary condition, any of which is fatal or causes  
25 the animal to suffer unduly, the veterinarian may humanely  
euthanize the animal. The veterinarian shall provide the pet

1 dealer with a written statement as to why the animal was  
2 euthanized.

3 E. If an animal is returned by a purchaser to a pet  
4 dealer due to disease, illness or a congenital or hereditary  
5 condition requiring veterinary care, the pet dealer shall provide  
6 the animal with proper veterinary care, including the options  
7 provided in Subsection D of this section.

7 Section 6. EUTHANASIA PROCEDURES. --

8 A. A warm-blooded animal, except one held as food for  
9 another animal, offered for sale or obtained for sale by a pet  
10 dealer may be euthanized only by administering sodium  
11 pentobarbital, a sodium pentobarbital derivative or a substance or  
12 procedure that acts on the central nervous system and is clinically  
13 proven to be humane.

14 B. A lethal solution shall be administered in the  
15 following order of preference:

16 (1) by intravenous injection by hypodermic  
17 needle;

18 (2) by intraperitoneal injection by hypodermic  
19 needle;

20 (3) by intracardial injection by hypodermic  
21 needle; or

22 (4) by solution or powder added to food.

23 C. An animal may be tranquilized with an approved  
24 humane substance before euthanasia is performed.

25 D. Euthanasia shall be performed by a licensed  
veterinarian or a lay person who is humane and proficient in the  
method used.

1 E. An animal shall not be left unattended between the  
2 time euthanasia procedures are commenced and the time death occurs,  
3 and its body shall not be disposed of until death is confirmed by a  
4 qualified person.

5 F. A cold-blooded animal, except one held as food for  
6 another animal, offered for sale or obtained for sale by a pet  
7 dealer may be euthanized only in accordance with American  
8 veterinary medical association standards.

9 G. A district attorney may bring an action to enjoin a  
10 violation of this section.

11 Section 7. REQUIREMENTS FOR CARE OF ANIMALS. --

12 A. A pet dealer shall:

13 (1) maintain facilities where animals are kept in  
14 a sanitary condition;

15 (2) provide animals with adequate nutrition and  
16 potable water;

17 (3) provide adequate space appropriate to the  
18 age, size, weight and species or breed of the animal, including  
19 providing sufficient space for the animal to stand up, to sit down  
20 and to turn about freely using normal body movements without the  
21 head touching the top of the cage and to lie in a natural position;

22 (4) provide animals housed on wire flooring with  
23 a rest board, floor mat or similar device that can be maintained in  
24 a sanitary condition;

25 (5) provide mammals with adequate socialization;

(6) wash hands before and after handling an  
infectious or contagious animal;

(7) maintain either:

1 (a) a fire alarm system that is either  
2 connected to a central reporting station that alerts the local fire  
3 department in case of fire or is connected to a location at which  
4 someone is usually present; or

5 (b) a fire suppression sprinkler system; and

6 (8) provide veterinary care without delay when  
7 necessary.

8 B. A pet dealer shall not purchase or assume ownership  
9 of a dog or cat that is younger than eight weeks old.

10 C. Dogs, cats and primates held by a pet dealer longer  
11 than three months shall be exercised twice daily for one hour and  
12 inspected by a veterinarian every fifteen days.

13 Section 8. RECORDS. --

14 A. A pet dealer shall keep a written record of the sale  
15 of each registered or registrable dog or cat for at least two years  
16 after the date of the sale. The record shall contain all the  
17 information required to be disclosed by the pet dealer and shall be  
18 available to animal control officers and law enforcement officers  
19 for inspection during normal business hours.

20 B. For all other animals, a pet dealer shall keep a  
21 written record of the source of the animal and the animal's  
22 veterinary record.

23 Section 9. REPRESENTATION REGARDING PEDIGREE REGISTRATION. --

24 A. A pet dealer shall not state, promise or represent  
25 to the purchaser, directly or indirectly, that a dog or cat is  
registered or capable of being registered with a pedigree registry  
organization unless the pet dealer provides the purchaser with the  
documents necessary for that registration within one hundred twenty

1 days following the sale of the dog or cat.

2 B. If the pet dealer fails to provide the documents  
3 necessary for registration within thirty days of written notice by  
4 the purchaser that the purchaser has not received the documents,  
5 the purchaser may keep the dog or cat and receive a partial refund  
6 of fifty percent of the purchase price or return the dog or cat,  
7 along with all documentation previously provided to the purchaser,  
8 for a full refund.

8 Section 10. REGISTRATION NOTICE--DISCLOSURE STATEMENT.--

9 A. A pet dealer that sells dogs or cats that are  
10 registered or registrable with a pedigree registry shall post  
11 conspicuously within close proximity to those dogs or cats a notice  
12 that states: "Pedigree registration does not assure proper  
13 breeding conditions, health, quality or claims to lineage."

14 B. For every dog or cat sold by a pet dealer that is  
15 sold with the representation that the dog or cat is registered or  
16 registrable with a pedigree registry organization, the following  
17 fully completed disclosure shall be made by the pet dealer orally  
18 and in writing on a sheet separate from any other statement in  
19 substantially the following form:

"Disclosure by \_\_\_\_\_

PEDIGREE REGISTRATION DISCLOSURE

Description of dog or cat:

\_\_\_\_\_

The dog or cat you are purchasing is registered/registrable (circle  
one) with the \_\_\_\_\_(enter name of registry).

Registration means only that \_\_\_\_\_(enter name  
of registry) maintains information regarding the parentage and

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1 identity of this dog or cat; it does not guarantee the quality or  
2 health of this dog or cat, and it does not guarantee quality  
3 lineage. Since pedigree registries may depend on the honesty and  
4 accuracy of persons registering dogs or cats, registration does not  
5 guarantee the accuracy of the lineage recorded or that this dog or  
6 cat is a purebred.

Acknowledged: \_\_\_\_\_ Date: \_\_\_\_\_

7 Purchaser's signature".

8 C. The disclosure shall be signed and dated by the  
9 purchaser of the dog or cat, acknowledging receipt of a copy of the  
10 statement. The pet dealer shall retain a copy of the signed  
11 disclosure.

12 Section 11. INFORMATION DISCLOSURE STATEMENT FOR  
13 PURCHASER. --

14 A. The pet dealer shall deliver to the purchaser at the  
15 time of sale a written information disclosure statement in a  
16 standardized form prescribed by the board of veterinary medicine  
17 containing the following information:

18 (1) the breeder's and broker's names and  
19 addresses, if known, or, if not known, the source of the animal;

20 (2) the animal's complete veterinary record,  
21 including a record of any veterinary treatment or medication given  
22 while the animal was in the possession of the pet dealer;

23 (3) the breed, sex, color and identifying marks  
24 of the dog or cat sold and, if the person from whom a dog or cat  
25 was obtained is a pet dealer licensed by the United States  
department of agriculture, the person's name, address and federal  
dealer identification number;

1 (4) the date of the dog's or cat's birth, unless  
2 unknown because of the source of the dog or cat, and the date the  
3 pet dealer received the dog or cat;

4 (5) whether the dog or cat is purebred,  
5 registered or registrable and, if the dog or cat is being sold as  
6 such, the names and registration numbers of the sire and dam and  
7 the litter number, if known;

8 (6) if the dog or cat is from a United States  
9 department of agriculture-licensed source, the individual  
10 identifying tag, tattoo or collar number for the dog or cat;

11 (7) for purchasers of dogs or cats, information  
12 provided by reputable humane organizations about the value of  
13 spaying and neutering;

14 (8) a statement signed by the pet dealer at the  
15 time of sale that the dog or cat has no known disease or has no  
16 known congenital or hereditary condition that adversely affects its  
17 health at the time of the sale or that is likely to adversely  
18 affect its health in the future;

19 (9) if the dog or cat does have a disease or  
20 congenital or hereditary condition that adversely affects its  
21 health at the time of sale or is likely to adversely affect its  
22 health in the future, then a record of the disease or congenital or  
23 hereditary condition and a statement signed by a veterinarian that  
24 authorizes the sale of the dog or cat, recommends necessary  
25 treatment, if any, and verifies that the disease or congenital or  
hereditary condition does not require hospitalization or a  
nonelective surgical procedure in the future; provided, however,  
that a veterinarian's statement is not required for intestinal or

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1 external parasites unless their presence makes or is likely to make  
2 the dog or cat clinically ill. The veterinarian's statement is  
3 valid for seven days following examination of the dog or cat by the  
4 veterinarian; and

5 (10) for all other animals:

6 (a) a statement signed by the pet dealer at  
7 the time of sale that the animal has no known disease that  
8 adversely affects its health at the time of the sale or that is  
9 likely to adversely affect its health in the future; and

10 (b) if the animal does have a disease that  
11 adversely affects its health at the time of sale or is likely to  
12 adversely affect its health in the future, then a record of the  
13 disease and a statement signed by a veterinarian that authorizes  
14 the sale of the animal, recommends necessary treatment, if any, and  
15 verifies that the disease does not require hospitalization or a  
16 nonelective surgical procedure in the future; provided, however,  
17 that a veterinarian's statement is not required for intestinal or  
18 external parasites unless their presence makes or is likely to make  
19 the animal clinically ill. The veterinarian's statement is valid  
20 for seven days following examination of the animal by the  
21 veterinarian.

22 B. The written information disclosure statement shall  
23 be signed by the pet dealer certifying the accuracy of the  
24 statement and by the purchaser acknowledging receipt of the written  
25 information disclosure statement.

C. A disease or a congenital or hereditary condition  
that adversely affects the health of a dog or cat at the time of  
sale or is likely to adversely affect its health in the future

1 shall be one that is apparent to the pet dealer at the time of sale  
2 or that should have been known by the pet dealer from the history  
3 of veterinary treatment disclosed pursuant to the provisions of  
4 this section.

5 D. For all other animals, a disease that adversely  
6 affects the health of the animal at the time of sale or is likely  
7 to adversely affect its health in the future shall be one that is  
8 apparent to the pet dealer at the time of sale or that should have  
9 been known by the pet dealer from the history of veterinary  
10 treatment disclosed pursuant to the provisions of this section.

11 Section 12. PURCHASER'S REMEDIES AFTER SALE OF UNFIT DOG OR  
12 CAT--VETERINARIAN'S STATEMENT--PAYMENTS DEADLINE.--

13 A. A dog or cat shall be considered unfit for sale if a  
14 veterinarian states in writing that:

15 (1) within fifteen days after the purchaser has  
16 taken physical possession of the dog or cat sold by a pet dealer,  
17 it became ill due to a disease that existed before delivery of the  
18 dog or cat to the purchaser; or

19 (2) within six months after the purchaser takes  
20 physical possession of the dog or cat, it has a congenital or  
21 hereditary condition that adversely affects its health or requires  
22 hospitalization or a nonelective surgical procedure related to the  
23 congenital or hereditary condition.

24 B. If a dog or cat is considered unfit for sale and  
25 veterinary examinations were performed by the pet dealer prior to  
sale pursuant to Section 5 of the Pet Dealer Act, the pet dealer  
shall provide the purchaser with any of the following remedies that  
the purchaser elects:

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1 (1) return the dog or cat to the pet dealer for a  
2 refund of the purchase price plus reimbursement for reasonable  
3 veterinary fees for diagnosis and treatment of the dog or cat not  
4 to exceed fifty percent of the purchase price of the dog or cat;

5 (2) exchange the dog or cat for a dog or cat of  
6 the purchaser's choice of equivalent value, if a replacement dog or  
7 cat is available, and reimbursement for reasonable veterinary fees  
8 for diagnosis and treatment of the dog or cat in an amount not to  
9 exceed fifty percent of the purchase price of the exchanged dog or  
cat; or

10 (3) keep the dog or cat and be reimbursed for  
11 reasonable veterinary fees for diagnosis and treatment of the dog  
12 or cat in an amount not to exceed fifty percent of the purchase  
13 price of the dog or cat.

14 C. If a dog or cat is considered unfit for sale and  
15 veterinary examinations were not performed by the pet dealer prior  
16 to sale pursuant to Section 5 of the Pet Dealer Act, the pet dealer  
17 shall provide the purchaser with any of the following remedies that  
the purchaser elects:

18 (1) return the dog or cat to the pet dealer for a  
19 refund of the purchase price plus reimbursement for reasonable  
20 veterinary fees for diagnosis and treatment of the dog or cat, the  
21 total not to exceed two hundred percent of the purchase price of  
the dog or cat;

22 (2) exchange the dog or cat for a dog or cat of  
23 the purchaser's choice of equivalent value, if a replacement dog or  
24 cat is available, and reimbursement for reasonable veterinary fees  
25 for diagnosis and treatment of the dog or cat in an amount not to

1 exceed the purchase price of the exchanged dog or cat; or

2 (3) keep the dog or cat and be reimbursed for  
3 reasonable veterinary fees for diagnosis and treatment of the dog  
4 or cat in an amount not to exceed one hundred percent of the  
5 purchase price of the dog or cat.

6 D. If the dog or cat dies and veterinary examinations  
7 were performed by the pet dealer prior to sale pursuant to Section  
8 5 of the Pet Dealer Act, the purchaser may obtain a refund for the  
9 purchase price of the dog or cat or a replacement dog or cat of  
10 equivalent value of the purchaser's choice and reimbursement for  
11 reasonable veterinary fees for diagnosis and treatment of the dog  
12 or cat in an amount not to exceed fifty percent of the purchase  
13 price of the dog or cat.

14 E. If the dog or cat dies and veterinary examinations  
15 were not performed by the pet dealer prior to sale pursuant to  
16 Section 5 of the Pet Dealer Act, the purchaser may obtain a refund  
17 for the purchase price of the dog or cat or a replacement dog or  
18 cat of equivalent value of the purchaser's choice and reimbursement  
19 for reasonable veterinary fees for diagnosis and treatment of the  
20 dog or cat in an amount not to exceed one hundred percent of the  
21 purchase price of the dog or cat.

22 F. The veterinarian's statement shall contain the  
23 following information:

- 24 (1) the purchaser's name and address;  
25 (2) the dates the dog or cat was examined;  
(3) the species or breed; color, markings or  
other identifying characteristics; and age of the dog or cat, if  
known;

1 (4) that the veterinarian physically examined the  
2 dog or cat;

3 (5) that the dog or cat has or had a disease or  
4 congenital or hereditary condition that rendered it unfit for  
5 purchase or resulted in its death; and

6 (6) the precise findings of the examination or  
7 necropsy, including laboratory results or copies of laboratory  
8 results.

9 G. If a reimbursement for reasonable veterinary fees is  
10 being requested, the veterinarian's statement shall be accompanied  
11 by an itemized bill of fees appropriate for diagnosis and treatment  
12 of the disease or congenital or hereditary condition.

13 H. Refunds and payments of reimbursable fees shall be  
14 paid, unless contested, by the pet dealer to the purchaser not  
15 later than ten business days following receipt of the  
16 veterinarian's statement or, if applicable, not later than ten  
17 business days after the date on which the dog or cat was returned  
18 to the pet dealer.

19 Section 13. PURCHASER'S REMEDIES AFTER SALE OF UNFIT ANIMAL  
20 OTHER THAN DOG OR CAT--VETERINARIAN'S STATEMENT--PAYMENTS  
21 DEADLINE.--

22 A. An animal shall be considered unfit for sale if a  
23 veterinarian specially trained in veterinary medicine for that  
24 species states in writing that within fifteen days after the  
25 purchaser has taken physical possession of the animal sold by a pet  
26 dealer, the animal became ill due to a disease that existed in the  
27 animal before delivery of the animal to the purchaser.

28 B. If an animal is considered unfit for sale, the pet

1 dealer shall provide the purchaser with any of the following  
2 remedies that the purchaser elects:

3 (1) return the animal to the pet dealer for a  
4 refund of the purchase price plus reimbursement for reasonable  
5 veterinary fees for diagnosis and treatment of the animal, the  
6 total not to exceed two hundred percent of the purchase price of  
the animal;

7 (2) exchange the animal for an animal of the  
8 purchaser's choice of equivalent value, if a replacement animal is  
9 available, and reimbursement for reasonable veterinary fees for  
10 diagnosis and treatment of the animal in an amount not to exceed  
11 one hundred percent of the purchase price of the exchanged animal;  
12 or

13 (3) keep the animal and be reimbursed for  
14 reasonable veterinary fees for diagnosis and treatment of the  
15 animal in an amount not to exceed one hundred percent of the  
purchase price of the animal.

16 C. If the animal dies, the purchaser may obtain a  
17 refund for the purchase price of the animal or a replacement animal  
18 of equivalent value of the purchaser's choice and reimbursement for  
19 reasonable veterinary fees for diagnosis and treatment of the  
20 animal in an amount not to exceed one hundred percent of the  
purchase price of the animal.

21 D. The veterinarian's statement shall contain the  
22 following information:

- 23 (1) the purchaser's name and address;
- 24 (2) the dates the animal was examined;
- 25 (3) the species or breed; color, markings or

Underscored material = new  
[bracketed material] = delete

1 other identifying characteristics; and age of the animal, if known;

2 (4) that the veterinarian physically examined the  
3 animal;

4 (5) that the animal has or had a disease that  
5 rendered it unfit for purchase or resulted in its death; and

6 (6) the precise findings of the examination or  
7 necropsy, including laboratory results or copies of laboratory  
8 results.

9 E. If a reimbursement for reasonable veterinary fees is  
10 being requested, the veterinarian's statement shall be accompanied  
11 by an itemized bill of fees appropriate for diagnosis and treatment  
12 of the disease.

13 F. Refunds and payments of reimbursable fees shall be  
14 paid, unless contested, by the pet dealer to the purchaser not  
15 later than ten business days following receipt of the  
16 veterinarian's statement or, if applicable, not later than ten  
17 business days after the date on which the animal was returned to  
18 the pet dealer.

19 Section 14. UNFIT FOR SALE-- PARASITES NOT GROUNDS-- FEES. --

20 A. A finding by a veterinarian of intestinal or  
21 external parasites shall not be grounds for declaring an animal  
22 unfit for sale unless their presence makes or is likely to make the  
23 animal clinically ill.

24 B. The fee for veterinary services shall be deemed  
25 reasonable if the services rendered are appropriate for the  
diagnosis and treatment of disease or congenital or hereditary  
condition and the fee is similar to fees charged by other  
veterinarians in the locale for similar services.

1           Section 15.   **PROCEDURE TO CONTEST DEMAND FOR REMEDIES.** --

2           A.   If the pet dealer contests a demand for any of the  
3 remedies specified in Section 12 or 13 of the Pet Dealer Act, the  
4 pet dealer may require the purchaser to produce the animal for  
5 examination by a veterinarian designated by the pet dealer. The  
6 pet dealer shall pay the cost of the examination. If the deceased  
7 animal's body is not available for examination, the purchaser may  
8 only claim a replacement, not veterinary fees or a refund.

9           B.   If the purchaser and the pet dealer are unable to  
10 reach an agreement within ten business days following receipt by  
11 the pet dealer of the veterinarian's statement provided by Section  
12 12 or 13 of the Pet Dealer Act, or following receipt of the animal  
13 for examination by the pet dealer's veterinarian, whichever is  
14 later, the purchaser may initiate an action in a court of competent  
15 jurisdiction to resolve the dispute or the parties may submit to  
16 binding arbitration if mutually agreed upon in writing by the  
17 parties.

18           C.   The prevailing party in the dispute may collect  
19 court costs and reasonable attorney fees only if the court finds  
20 the other party acted in bad faith.

21           Section 16.   **REQUIREMENTS TO OBTAIN REMEDIES.** -- To obtain the  
22 remedies provided for in Section 12 or 13 of the Pet Dealer Act,  
23 the purchaser shall comply substantially with the following  
24 requirements:

25           A.   notify the pet dealer as soon as possible but not  
more than two days, weekends, holidays and other days the pet  
dealer is closed excluded, after the diagnosis by a veterinarian of  
a health problem, including a congenital or hereditary condition of

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1 a dog or cat, and of the name and telephone number of the  
2 veterinarian providing the diagnosis;

3 B. if the animal died, provide the pet dealer with a  
4 written statement from a veterinarian that the animal died from a  
5 disease, illness or congenital or hereditary condition that existed  
6 on or before the delivery of the animal to the purchaser. The  
7 presentation of the statement shall be sufficient proof to claim  
8 replacement if the deceased animal's body is not available; and

9 C. inform the pet dealer of the remedy chosen pursuant  
10 to Section 12 or 13 of the Pet Dealer Act.

11 Section 17. REFUND, REPLACEMENT AND REIMBURSEMENT OF  
12 VETERINARY FEES--LIMITATIONS. --No refund, replacement or  
13 reimbursement of veterinary fees shall be made if any of the  
14 following conditions exist:

15 A. the disease or death resulted from maltreatment or  
16 neglect or from an injury sustained or a disease contracted  
17 subsequent to the delivery of the animal to the purchaser;

18 B. the purchaser fails to carry out the recommended  
19 treatment prescribed by the examining veterinarian who made the  
20 initial diagnosis; provided, however, this subsection shall not  
21 apply if the cost of the treatment together with the veterinary fee  
22 for the diagnosis would exceed the purchase price of the animal;

23 C. a veterinarian's statement was provided to the  
24 purchaser as part of the written information disclosure statement  
25 that disclosed the disease or congenital or hereditary condition  
for which the purchaser seeks to return the animal; provided,  
however, that this subsection does not apply if, within six months  
after the purchaser takes physical possession of the animal, a

1 veterinarian states in writing that the disease or congenital or  
2 hereditary condition requires or is likely in the future to require  
3 hospitalization or a nonelective surgical procedure or that the  
4 disease or congenital or hereditary condition resulted in the death  
5 of the animal; or

6 D. the purchaser refuses to return to the pet dealer  
7 all documents previously provided to the purchaser for the purpose  
8 of registering the animal.

9 Section 18. WRITTEN NOTICE OF PURCHASER'S RIGHTS. --

10 A. Every pet dealer that sells an animal shall provide  
11 the purchaser at the time of sale, and a prospective purchaser upon  
12 request, with a written notice of rights. The notice shall be  
13 provided as a separate document. The written notice of rights  
14 shall be signed by the purchaser acknowledging that he has reviewed  
15 the notice. The notice shall be in substantially the following  
16 form:

17 "A STATEMENT OF NEW MEXICO LAW GOVERNING  
18 THE SALE OF ANIMALS

19 The sale of animals is subject to the provisions of the Pet  
20 Dealer Act.

21 If a veterinarian states in writing that your animal is unfit  
22 for purchase because it became ill due to a disease that existed  
23 within fifteen days following delivery to you, you may choose one  
24 of the following:

25 (1) return your animal and receive a refund of the  
purchase price and receive reimbursement for reasonable veterinary  
fees up to the purchase price of the animal;

(2) return your animal and receive an animal of your

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1 choice of equivalent value, if a replacement animal is available,  
2 and receive reimbursement for reasonable veterinary fees up to the  
3 purchase price of the exchanged animal; or

4 (3) keep your animal and receive reimbursement for  
5 reasonable veterinary fees up to the purchase price of the animal.

6 If the pet dealer had your animal examined prior to sale, you  
7 will only be allowed reimbursement of reasonable veterinary fees up  
8 to fifty percent of the purchase price of the animal.

9 If your animal dies, you may receive a refund for the  
10 purchase price of the animal or a replacement animal of your choice  
11 of equivalent value. You may also be reimbursed for reasonable  
12 veterinary fees for the diagnosis and treatment of the animal in an  
13 amount not to exceed the purchase price of the animal. As provided  
14 above, the amount of reimbursement for veterinary fees is  
15 contingent on whether the pet dealer had your animal examined by a  
16 veterinarian prior to sale.

17 To obtain available remedies, your veterinarian must state in  
18 writing that the animal died due to a disease that existed within  
19 fifteen days after you obtained physical possession of the animal  
20 after the sale by the pet dealer. The total of refund and  
21 reimbursement fees may not be more than twice the purchase price of  
22 the animal.

23 To exercise these rights, you must notify the pet dealer as  
24 quickly as possible but no later than two days, weekends, holidays  
25 and other days the pet dealer is closed excluded, after your  
veterinarian informs you that a problem exists. You must tell the  
pet dealer about the problem and give the pet dealer the name and  
telephone number of the veterinarian providing the diagnosis.

1           If you are making a claim, you must present to the pet dealer  
2 a written veterinarian's statement, in a form prescribed by law,  
3 that the animal is unfit for purchase and an itemized statement of  
4 all veterinary fees related to the claim. This information must be  
5 presented to the pet dealer no later than two days, weekends,  
6 holidays and other days the pet dealer is closed excluded, after  
7 you receive the written statement from the veterinarian.

8           If the pet dealer wishes to contest the statement or the  
9 veterinarian's bill, the pet dealer may request that you produce  
10 the animal for examination by a veterinarian of the pet dealer's  
11 choice. The pet dealer shall pay the cost of this examination.

12           A deceased animal need not be returned to the pet dealer if  
13 the animal's body is not available; however, in that case, you can  
14 only receive a replacement animal.

15           If you purchased a dog or cat and you discovered within six  
16 months of purchase that the dog or cat has a congenital or  
17 hereditary condition that adversely affects its health, or it  
18 requires hospitalization or a nonelective surgical procedure  
19 related to the condition, your remedies will be the same as those  
20 provided for diseased animals described above.

21           If you and the pet dealer cannot resolve the claim within ten  
22 business days following receipt of the veterinarian's statement or  
23 the examination by the pet dealer's veterinarian, whichever occurs  
24 later, you may file an action in a court of competent jurisdiction  
25 to resolve the dispute. The court may award costs and attorney  
fees to the prevailing party if the court finds that the other  
party acted in bad faith. If the pet dealer does not contest the  
matter, the pet dealer must make the refund or reimbursement no

1 later than ten business days after receiving the veterinarian's  
2 statement.

3 If the pet dealer represented your dog or cat as registrable  
4 with a pedigree registry organization, the pet dealer shall provide  
5 you with the papers necessary to process the registration within  
6 one hundred twenty days following the date you received the dog or  
7 cat. If the pet dealer fails to deliver the papers within the  
8 prescribed time, you are entitled to return the dog or cat for a  
9 full refund of the purchase price or, if you choose to keep the dog  
or cat, a refund of fifty percent of the purchase price.

10 THIS STATEMENT IS A SUMMARY OF KEY PROVISIONS OF THE CONSUMER  
11 PROTECTION REMEDIES AVAILABLE TO YOU. IT IS NOT AN EXACT REPLICA  
12 OF THE LAW. NEW MEXICO LAW ALSO PROVIDES SAFEGUARDS TO PROTECT PET  
13 DEALERS. IF YOU HAVE ANY QUESTIONS, OBTAIN A COPY OF THE COMPLETE  
RELEVANT STATUTES.

14 The pet dealer will discuss other information required by law  
15 to be provided to you upon request. "

16 B. The pet dealer shall post in a conspicuous location  
17 a sign in large print that states that the notice provided for in  
18 this section is available to purchasers and potential purchasers  
upon request.

19 Section 19. REMEDIES NOT EXCLUSIVE. --

20 A. Nothing in the Pet Dealer Act limits the rights and  
21 remedies that are otherwise available to a purchaser under any  
22 other law, nor shall that act limit the pet dealer and the  
23 purchaser from agreeing between themselves on additional terms and  
24 conditions that are not inconsistent with that act. An agreement  
25 by a purchaser to waive any rights under that act is void.

1 B. Nothing in the Pet Dealer Act limits or authorizes  
2 any act or omission that would be a crime under the Criminal Code,  
3 Chapter 77 NMSA 1978 or other New Mexico laws.

4 C. Nothing in the Pet Dealer Act shall preclude a  
5 person from pursuing relief through the Unfair Practices Act.

6 Section 20. CRIMINAL PENALTIES. --

7 A. A person who violates Section 4, 5, 6, 8, 9, 11 or  
8 18 or Paragraphs (1) through (4) and (6) through (8) of Subsection  
9 A of Section 7 of the Pet Dealer Act is guilty of a misdemeanor and  
10 upon conviction shall be sentenced pursuant to the provisions of  
11 Section 31-19-1 NMSA 1978.

12 B. If authorized to do so by the municipality or  
13 county, a municipal or county animal control officer may appear and  
14 prosecute charges pursuant to this section.

15 Section 21. CIVIL PENALTIES. --

16 A. Except as otherwise provided in this subsection, a  
17 person violating any provision of the Pet Dealer Act shall be  
18 liable for a civil penalty of not to exceed one thousand dollars  
19 (\$1,000) per violation. The civil action may be prosecuted by the  
20 district attorney for the county in which the violation occurred.  
21 For the first violation of Paragraph (2) of Subsection A of Section  
22 12 of the Pet Dealer Act, the pet dealer shall be subject to  
23 purchaser's remedies only.

24 B. Except as otherwise provided in the Pet Dealer Act,  
25 no pet dealer shall knowingly sell an animal that has a disease or  
a dog or cat that has a congenital or hereditary condition that  
requires hospitalization or nonelective surgical procedures. In  
addition to the civil penalty imposed pursuant to Subsection A of

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1 this section, the pet dealer may be prohibited from selling animals  
2 for up to thirty days. For a second offense under this subsection,  
3 the pet dealer shall be liable for a civil penalty of up to two  
4 thousand five hundred dollars (\$2,500) or a prohibition from  
5 selling animals for up to ninety days or both. For a third offense  
6 under this subsection, the pet dealer shall be liable for a civil  
7 penalty of up to five thousand dollars (\$5,000) or a prohibition  
8 from selling animals for up to six months or both. For a fourth  
9 offense under this subsection, the pet dealer shall be liable for a  
10 civil penalty of up to ten thousand dollars (\$10,000) and a  
11 prohibition from selling animals for a period determined by the  
12 court. For purposes of this subsection, a violation that occurred  
13 over five years prior to the most recent violation shall not be  
14 considered.

13 C. Except as otherwise provided in this subsection, a  
14 pet dealer who misrepresents a dog or cat as registered or  
15 registrable in violation of Subsection A of Section 9 of the Pet  
16 Dealer Act shall be liable to the purchaser for civil damages in an  
17 amount equal to two times the cost of the dog or cat. For the  
18 first violation of Subsection A of Section 9 of the Pet Dealer Act,  
19 the pet dealer shall only provide damages in an amount equal to the  
20 purchase price of the animal. Claim for payment pursuant to this  
21 subsection shall be made within one year from the date of purchase  
22 of the dog or cat. The remedy provided in this subsection shall be  
23 in addition to any other remedies or penalties provided in the Pet  
24 Dealer Act.

24 Section 22. EFFECTIVE DATE. -- The effective date of the  
25 provisions of this act is July 1, 1997.

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